

MEETING MINUTES
Greensboro Board of Adjustment
June 22, 2020

The meeting of the Greensboro Board of Adjustment was held on Tuesday, June 22, 2020 at 5:40 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Stephen Barkdull, James Waddell, Leah Necas, Mary Skenes, Vaughn Ramsey, and Ted Oliver. City staff present were Shayna Thiel, Luke Carter, Steve Galanti, Alan Andrews (Chief Deputy City Attorney) and Andrew Kelly (Assistant City Attorney).

Chair Truby welcomed everyone to the virtual meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

SWEARING IN OF STAFF

Shayna Thiel and Steve Galanti of the Planning Department were sworn in for testimony in the following cases.

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

APPROVAL OF THE MINUTES (May 26, 2020)

Ms. Necas advised the adjournment time of 6:55 pm. was incorrect in the meeting minutes. The correct time was 5:55 pm. Mr. Barkdull made a motion to approve the minutes as amended, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull. Nays: 0.)

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-14: 1000 DOVER ROAD (APPROVED)

Ms. Thiel stated in case BOA-20-14, at 1000 Dover Road, Jimmy Haynes, on behalf of David and Ashley Anderson request a variance to allow a proposed house to encroach 14.8 feet into a required 45.8 foot front setback. The house will be 31 feet from the front property line.

Evidence provided by the applicant included Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-1.4 (A)(1)(B): front setback calculations.

Background and Site Information: The subject lot is located on the north side of Dover Road, west of Hammel Road, and is zoned R-3. Tax records indicate the lot contains approximately 20,038 square feet and the existing house was constructed in 1963. The applicants propose to demolish the existing house, which is a nonconforming structure, and construct a new one on the lot that will encroach 14.8 feet into a required 45.8 foot front setback and be 31 feet from the front property line. If the variance is granted, the applicants will proceed with the building permit process for demolition of the existing house and construction of the new one.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlays and plans. Ms. Thiel advised staff received some notarized letters from neighbors supporting the project that can be displayed on the screen when applicable.

Chair Truby requested the applicant to come forward and provide their name and address for the record.

Jimmy Haynes, representing David and Ashley Anderson. Also present were Graham Farless and Brey Curtis, neighbors in support of the request. Chair Truby advised if they were to speak, they would need to be sworn in. Mr. Haynes advised other than acknowledging their support, he did not think they had anything else to say.

Mr. Haynes stated this request is for a 14.8 foot variance into a 45.8 foot setback. The resulting setback will be 31 feet and be no closer to the front property than the home immediately next door which is 30 feet. The hardship for this property was except for this variance, the applicants would not be able to build the house. The house was purchased in 2008 and the existing home was a legal nonconforming house due the 2014 change to the Land Development Ordinance (LDO). The existing house is 5.9 feet from where the existing setback is located and the variance request is for an additional 8.9 feet from where the house currently exists. The topography slopes down and where the subject house is located it is a shotgun lot and almost twice as long as it is wide, sloping down toward the golf course. The existing home has a carport and the plans are to build a house that will be in compliance with the setback requirements on the east, west, and rear, and a large garage that would encroach into the front setback. This hardship did not result from actions taken by the applicant as the house was purchased in 2008. The applicants want to stay in this location as they love their neighbors and their family is growing. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice achieved. A memorandum was attached to the packets presented from 2014 referencing the application of the infill setback standards stating the intent for an average setback was to obtain relative consistency among the setback, not a precise line. Looking at the houses, each setback is different and unique to their property. This variance will be not be any closer to the property line and will comply with the R-3 25 foot setback. Mr. Haynes referred to the plans indicating the two-car garage. Plat Book 19-25 shows the lot having utility easements in the rear and eastern property line. Mr. Haynes stated the evidence does point to approval of the variance. Chair Truby inquired if there were questions for Mr. Haynes. Mr. Waddell requested to have the notarized documents placed on the screen.

Mr. Ramsey asked if there was opposition. Mr. Haynes responded he was not aware of any. Mr. Oliver asked what the average setback was for all the other houses. Mr. Haynes responded each one would be different because it is the average for each house, two on the left and two on the right. For 1000 Dover Road, it is 45.8, which sits back further than the 25 feet. The main house itself will be beyond 45.8 feet. Mr. Haynes did not have the exact measurement, but only the garage would encroach. Ms. Necas stated her concern was not actually about adding a garage, but approving an entire house that is going to be actually 14 feet into the setback, not 8 feet closer than the prior house. The old house can't be used in defense of building a new house on the same property. Ms. Necas stated that going by the four factors relevant to the issuance of a variance, she did not think this request was appropriate. Usually when approvals are made, it is for a house that was built in the 1960s, such as this one, and requesting an addition to a house that would not be moving. This variance is being asked for a new proposed home. Ms. Necas was concerned for how the variance would be written for this particular house. If the house is being moved, the Board should not be considering the house at all in the approval because the house is no longer going to be in existence. The Board is being asked to approve an entirely new setback for a new house. There is not enough leeway for the Board of Adjustment to approve the request just because the prior house was there. Mr. Haynes responded the house is within the setbacks as they exist. The footprint is almost identical. He said that only the garage will encroach and tried to distinguish between the house and the garage. The house was built in 1963, purchased in 2008. One of the points in favor of the variance is it was not until 2014 that the average front setbacks came into play. It was not until 2014 when the LDO required a front average setback that anything they would want to do now with this home would encroach into the front setback. Mr. Haynes stated it is very important to tailor the variance to exactly what is being asked for. This request is for an attached 2 car garage that will encroach 14.8 feet into a 45.8 front setback.

Chair Truby asked if there were any further questions for the applicant. Ms. Thiel shared the notarized letter from the Sherrills at 1006 Dover Road on the screen. Chair Truby asked where was the Sherrills home was

located in relation to the applicant's home. Ms. Thiel responded probably 3 houses down. Ms. Thiel shared a notarized letter from the Cokers of 1003 Dover Road who live across the street. Ms. Thiel advised there was also an email that was not notarized from Erica Procton at 912 Dover Road. Chair Truby asked if Ms. Procton would be speaking. Ms. Thiel responded it did not appear she was in the meeting. Chair Truby requested Graham Farless to state his name and address for the record. Mr. Farless was sworn in to provide testimony.

Graham Farless, 909 Dover Road. Mr. Farless supported the request. He had reviewed the plans and felt the setback as proposed and the proposal of the house would be consistent with the neighborhood. Mr. Farless did not see any issues from the neighborhood and street perspective at all.

Chair Truby requested the Andersons to speak. The Andersons were sworn in to provide testimony.

David and Ashley Anderson, 1000 Dover Road. Chair Truby asked the Andersons if they had communicated with the neighbors on the left and right of the them. Ms. Anderson responded that Brey Curtis is on Zoom and the neighbor directly on the other side, Erica Procton, sent the email that was not notarized. They are their direct neighbors. Chair Truby inquired if there were any complaints from any of the surround neighborhoods. Ms. Anderson responded they have not received any. Chair Truby inquired if any of the other Board members had questions for the owners.

Chair Truby inquired if the attorney had anything else to add. Mr. Haynes responded he did not. Chair Truby inquired if there was anyone wishing to speak in opposition to the request. Seeing none, Chair Truby requested to go to Board discussion.

DISCUSSION

Ms. Skenes, Mr. Waddell, Mr. Ramsey and Mr. Oliver felt this type of issue has been dealt by the Board since 2014. It is a relatively small adjustment and the adjoining property owners are in support of the project. Ms. Necas expressed her concern that if it was decided later on to build a house 15 feet in front of where the house is currently, the owners would be allowed to do that. Ms. Necas would like a way to make it specific that the plans submitted are the only ones being approved, as the neighbors living nearby are approving the proposed plan, not any change in the future. Chair Truby stated Ms. Necas brought up a good point. Chair Truby asked Mr. Kelly, Assistant City Attorney, if the Board granted the variance, could the applicants come back with a new plan and move the entire house up to the approved setback line. Mr. Kelly advised in theory the applicants could do that and reminded the Board that site or plan specific information comes before the Board with every case. The Board will approve a setback but in theory since the setback is being changed the house could be extended so that it is a square front or whatever type of façade the owners wanted. The Board does look at what the applicant is going to do and considers the neighborhood acceptance or opposition of the request. The applicant has the burden of proving that what they would like will meet all of the factors. The weight of the project may influence that particular decision. Mr. Kelly stated he did not know of a case where someone has asked for one thing and then did something substantially different. In theory, they would be allowed to do that. Conditions are what make the approval of the project appropriate and the granting of the variance appropriate. Mr. Haynes responded that what the application states and what has been submitted to the Board is for a proposed 2 car garage addition to the front of a new home. Mr. Kelly asked if the applicants would be okay with accepting conditions saying that based on the project as submitted. Mr. Haynes stated the plans have been put forward but have not been finalized as the variance needs to be in place. Mr. Haynes did not feel the applicants were opposed to it. If there was a real objection to the point where it would not be approved, a condition would be offered. Mr. Kelly stated the condition did not need to be plan specific, it is more project specific. Mr. Haynes stated in the application a variance was requested to allow a proposed 2 car garage addition in front of the new home to encroach. They did not petition for the entire house to encroach into a setback, only the garage. Ms. Thiel stated it was advertised as the proposed house because the garage is part of the house. The proposed garage is not separate. Mr. Kelly stated if there is concern, the Board does not have to approve the variance request. The Board could consider granting the variance for the 15 foot setback for the purpose of allowing the applicant to construct a 2 car garage addition. Mr. Kelly recommended the applicants accept any condition before the Board approves the variance. Mr. Ramsey asked if this should be continued to allow for the applicants to discuss the. Mr. Anderson stated if

the Board grants the variance, they would be able to move their entire house 31 feet from the street, but they are not going to. If they needed to provide a signed statement, they were happy to do so. Chair Truby asked if a condition was added into the motion stating the variance is being approved for the garage, would the applicants accept that as a condition to the variance approval. Mr. Anderson stated they would, but asked if that meant they would not be able to have an attic on top of the garage or a bonus room on top of the garage. Without talking to his attorney, he was not able to say yes. Mr. Anderson said that the plan set forth is what they are going to do if they are granted the variance and they are not going to move the entire house inside the setback. Ms. Anderson stated their next door neighbor (Brey Curtis) has not spoken but their garage would be further from the street than his by approximately a foot. Mr. Haynes stated carving out of what can and cannot go into the setback becomes closer to use and accessory uses versus a variance for the setback. Chair Truby stated based on the testimony and evidence, he was personally in support of the request and inquired if Mr. Barkdull had any comments, questions, or a motion.

Mr. Barkdull moved that in BOA-20-15, 1000 Dover Road, based on the findings of fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be allowed to raze the existing house for new construction and add the requested garage addition. (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because this property has a significant slope in the topography in the rear that backs up to the golf course, building the garage in the front is the only viable option. (3) The hardship is not the result of the applicant's own actions because the applicant purchased the home in 2008 with a front setback of 25, subsequently the LDO changed setbacks to 45.8 feet. (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, welfare, and substantial justice because the intent of the standard is to maintain consistency in the setbacks along Dover Road. This setback will be in harmony with the average setback along Dover Road. Seconded by Mr. Waddell. The Board voted 6-1 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, and Barkdull. Nays: 1, Necas.)

b. BOA-20-15: 3602 BUFFINGTON PLACE (APPROVED)

Ms. Thiel stated in case BOA-20-15, the applicants request a variance to allow a proposed porch addition to encroach 19 feet into a required 30 foot rear setback. The porch addition will be 11 feet from the rear property line.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference is Section 30-7-3.2 – Table 7-1: minimum rear setback is 30 feet in the R-3 District.

Background and Site Information: The subject lot is located on the north side of Buffington Place, south of Muirfield Drive, and is zoned R-3. Tax records indicate the cul-de-sac lot contains approximately 14, 810 square feet and the house was constructed in 1977. The existing house which includes an uncovered deck, is considered a nonconforming structure, as it encroaches 21 feet into a required 30 foot rear setback and also 1 foot into a 10 foot utility easement. The applicants propose to replace the existing deck with a covered porch at the rear of the house that will encroach 19 feet into a required 30 foot rear setback and will be 11 feet from the rear setback. The covered porch will have a smaller footprint than the existing deck and will be located outside of the utility easement. The applicants have applied for a building permit (#202003021) and if the variance is granted, will proceed with the permit process. If the variance is granted, the house will no longer be considered a nonconforming structure.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Chair Truby requested the applicant to come forward and provide their name and address for the record. The applicant was sworn. Chair Truby requested the applicant to tell the Board about his case.

Shayne Taylor, 3602 Buffington Place. He stated they would like to build an enclosed screened in patio that would replace the current deck. Mr. Taylor stated there is concrete on one side, a large slope on the left hand side. The house is set back on the lot where there is not much opportunity to do anything. Mr. Taylor said that the neighbors are supportive and provided 12 notarized letters. One of the letters was from the Cardinal Homeowners Association President.

DISCUSSION

Chair Truby inquired if there were questions from Board Members. Mr. Waddell stated he did not have questions but was very impressed by the applicant providing 12 notarized letters. Ms. Necas asked if the proposed porch was smaller than the current deck. Mr. Taylor responded that was correct. It will be moved outside of the utility easement to do the right thing. Chair Truby stated he did not have questions. Chair Truby inquired if there was anyone else to speak in support of the application. Seeing none, Chair Truby inquired if there was anyone in opposition to the request. Seeing none, Chair Truby inquired if there was a motion.

Mr. Ramsey moved that in BOA-20-15, 3602 Buffington Place, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the Variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the topography of the lot and location of the current house and concrete slab make placement of a new deck into the setback as the only area to place the deck. The new deck will also no longer encroach into the utility easement. (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the current deck location was on the house when purchased by the applicant. (3) The hardship is not the result of the applicant's own actions because the current deck and concrete slab were in place when the applicant acquired the property (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the improvements will add to the value of the property and in harmony with the current neighborhood, moreover the proposed deck will have a smaller footprint than the current deck and not infringe into the utility easement and become a conforming structure. Seconded by Mr. Barkdull. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Barkdull, and Necas). Nays: 0.)

NO OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES

There were no absences acknowledged.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:25 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment